

Proposed Policy Principles and Guidelines for Environmental Water Acquisitions

For Discussion Purposes Only
May 19, 1998 Draft

This is a merged version which is the result of considerable discussion. Where an issue has not been resolved completely, that is noted.

1. Purpose and Need: The environmental water acquisition program must be developed under a widely accepted statement of purpose and need *with clearly defined objectives.*

Outstanding issue: Some recommend that a second sentence be added that reads "Such statement should articulate the relationship between ecosystem improvement investments and the broader CALFED water management infrastructure improvements."

2. Virtual Pool: Funds for environmental water acquisition should be made available under a comprehensive program which considers acquisitions from the CVPIA Restoration Fund and all other sources. The Ecosystem Roundtable should support efforts to consolidate environmental water acquisition efforts within a single entity. Acquisitions should also be matched to need ("spot" market, short-term, long-term, permanent, options, etc.) based on the different types of funds available (e.g. regular annual collections tied to water/power sales, general fund appropriations, general fund appropriations with limited authorization windows, bond debt, etc).

3. Watershed planning: Water purchased must be used to achieve desired flow criteria for designated watersheds (and for the ecosystem as a whole) identified by local, regional, state and federal planning efforts. *Water purchased must be broadly supported by stakeholder interests.*

4. Implementation Partnerships: All environmental water acquisitions *shall* be on a voluntary basis from willing sellers. Partnerships between local interests and environmental water acquisition entities should be encouraged in order to utilize local expertise, increase program accountability, and build (*achieve?*) broad local support for acquisition programs. Prior to implementing an acquisition program in a particular watershed, ~~any local process established to evaluate transfers should be used, and in the absence of an established local process,~~ at least one public hearing *shall* be held in that watershed. *If a local process has been formally established that includes notice in a newspaper of general circulation 10 days before the meeting, a public hearing process, an open decision making process, CEQA procedures, and consistency with local water resources ordinances, then this may be substituted for the public hearing.*

Outstanding issue: The group generally concurs that this program will only work if there is general local support. However, if a requirement is in place that this local support must be unanimous, then the group is concerned that few issues are ever supported unanimously and so few transfers may be able to meet the test. Legal staff have suggested the use of the term "public meeting" to indicate that this is not just a hearing where statements are taken, but an opportunity for public discussion.

5. Environmental and Economic Analysis: A series of regional programmatic environmental and economic analyses should be conducted to ensure that local acquisition benefits are taken fully into account and that local acquisition impacts are reduced or appropriately mitigated. The analyses *shall* be at a level of detail where local impacts can be evaluated. This analysis *shall* be based on a range of water year types and include consideration of cumulative impacts of the comprehensive program.

Outstanding issue: If there are several transfers within a watershed, then these could either be evaluated individually or on a watershed basis. If the analysis is programmatic, it should be on a watershed basis and should not be on such a broad scale that it cannot detect local effects. These type of regional programmatic analysis may be more cost effective if there are several purchases from one source.

6. Information System: The acquisition program should include an "Information Management System" element, which contains all relevant biological and financial data to assure accountability.
7. Adaptive Management: All environmental water acquisition programs should include monitoring and assessment criteria. Based on these criteria, the terms of the specific acquisitions may be modified to better achieve program objectives and to respond to unanticipated impacts. The specific acquisition may also be terminated if needed.

Outstanding issue: Item 7 is not a consensus yet.

8. Verification of water rights: Verification should be required to assure that the seller is the water right holder or otherwise holds an unequivocal right to sell the water.
9. Water rights protection: A previous transfer of water will not be used to commit the transferor to provide a water supply beyond the term of the transfer or on terms other than those set forth in the transfer agreement. (For example, once the fishery has benefitted from the increased flow it will not cause an adverse environmental impact under CEQA or Fish and Game Code Section 5937 to stop the release.) This provision would not apply where water rights are being permanently acquired for instream purposes.
10. Competition: All sellers should be given the opportunity to participate as sellers and no area or seller should be excluded from possible participation in the environmental purchase program.
11. Protection of flows: All water acquired with environmental funds must reach and remain available throughout the targeted watershed and ecosystem. Diversion or export of acquired environmental water will only take place (1) with the express concurrence of the purchasing entity (USFWS/CDFG/other?), (2) with mutually agreed to compensation, and (3) *be subject to area of origin protection statutes*. Compensation funds would then be available for subsequent environmental purchases.

Alternative 1 (David Yardas's suggested language)

11. All water acquired with environmental funds must reach and remain available throughout the targeted watershed and ecosystem. Diversion or export of acquired environmental water will only take place if (1) such water is surplus to baseline environmental supplies, (2) the Bay-Delta ecosystem manager issues written findings that the water proposed for diversion or export is not needed, in whole or in part, whether directly, indirectly, or cumulatively, in support of the timely and sustained attainment of Bay-Delta ecosystem restoration objectives, and (3) compensation is provided to the [ecosystem restoration account] for the total costs of acquiring and transferring any water diverted or exported pursuant to (1) and (2) above.

Alternative 2 (Language suggested by an unnamed exporter)

Protection of flows: Water acquired with environmental funds is intended to reach and remain available throughout the targeted watershed and ecosystem so long as third parties such as the SWP and CVP export users are not adversely affected. Any acquisitions intended to increase Delta outflow must have the concurrence of DWR, USBR, and the CVP/SWP export users. Diversion or export of acquired environmental water will only take place if the USBR, DWR, CVP and SWP export users and environmental purchasing entities mutually agree to the terms.

Outstanding Issue: In reviewing the two suggestions, there appears to be a substantial difference in the approaches. If all the parties agreed on how to handle redirection of a specific transfer or if the transfer is too small to detect in the Delta, this issue would not likely result in a problem. But if all the parties could not reach agreement on a larger transfer, then this issue would likely be very contentious.

12. Maximum benefit: Where two sources of water or means of conveyance are available, environmental water should be acquired using the source and means which provides the greatest ecosystem benefit.
13. Right of first refusal: Entities within the area of origin *shall* have the right of first refusal to purchase water before such water is transferred out of the area.
14. Term and other condition: Preference should be given to multiple year and permanent transactions, including dry year options, acquisitions of water rights for instream purposes, and shared-use rights. ~~In addition, preference should be considered for larger purchases and purchases of water held under senior water rights.~~